746.

SUPREME COURT OF THE UNITED STATES.

No. 174.

ZACHARY PULLIAM, EX'OR OF AMOS ALBRITTON, PLAINTIFF IN ERROR,

vs.

SAMUEL WOODWARD.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE SOUTHERN DISTRICT OF ALABAMA.

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GIDEON, print.

UNITED STATES OF AMERICA, *ss.*

To Samuel Woodward, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the fifth judicial circuit court, southern district of Alabama, to be holden at Mobile, on the second Monday in March next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the middle district of Alabama, wherein Amos Albritton is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable William Crawford, judge of said district court of the United States for the middle district of Alabama, this thirteenth day of December, in the year of our Lord one thousand eight hundred and forty-three.

Attest: WM. CRAWFORD.

Service acknowledged, Feb'y 7th, 1844.

B. W. HUNTINGTON,
Att'y for defendant in error.

THE STATE OF ALABAMA,
Tuscaloosa county.

Personally came before me, the undersigned justice of the peace in and for the county aforesaid, Lincoln Clark, who upon his oath doth say, that B. W. Huntington, whose name as attorney for defendant in error is assigned on the back of this paper above, by way of acknowledgment of service of notice, admitted that said signature was his own proper signature.

LINCOLN CLARK.

Sworn to and subscribed before me, this 22d February, 1844.

N. L. WHITFIELD, [SEAL.]
Justice of the peace.

UNITED STATES OF AMERICA.

The President of the United States of America, to the judge of the district court of the United States of America for the middle district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said district court before you, between Samuel Woodward, (plaintiff in execution,) plaintiff, and Amos Albritton, (claimant,) defendant, a manifest error hath happened to the great damage of the said Amos Albritton, as by the complaint of the said Amos Albritton appears; and it being fit that the error, if any hath been made, should be duly corrected, and full and speedy justice

done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the circuit court of the United States for the fifth judicial circuit, southern district of Alabama, together with this writ, so that you have the same at the place of holding the said circuit court, in the city of Mobile, in the *in the* State of Alabama, on the second Monday of March next, in the said circuit court to be then and there held, that then the record and proceedings aforesaid being inspected, the said circuit court may cause to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable John McKinley, presiding judge of said circuit court, this fifteenth day of December, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth year.

Attest: A. G. COOK,
Clerk D. C. middle district of Alabama.

Pleas had before the honorable the district court of the United States for the middle district of Alabama, at a term thereof, begun and held at Tuscaloosa, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-three.

The honorable William Crawford, judge of said court, presiding.

SAMUEL WOODWARD, plaintiff in error,
vs.
AMOS ALBRITTON, claimant.

Be it remembered, that heretofore, to wit, on the 11th day of November, A. D. 1841, was issued from the clerk's office of the court aforesaid a writ of capias ad respondendum, in the words and figures following, to wit:

UNITED STATES OF AMERICA.

District court of the United States for the middle district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the bodies of Robert Swanzy and Zachary Pullium, surviving partners in trade of the late Moses W. Taggart, under the firm name of Taggart, Swanzy & Pullium, who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the judge of the said court, at the place of holding said court, at Tuskahome, on the first Monday after the fourth Monday in November next, to answer to Samuel Woodward, who is a citizen of the State of Pennsylvania, in a plea of trespass on the case, to his damage two thousand dollars; herein fail not, and have you then and there this writ.

Witness the Hon. William Crawford, judge of the said court, this fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-one.

[L. S.]

Issued the eleventh day of November, in the year of our Lord one thousand eight hundred and forty-one.

Attest: A. G. COOK,
Clerk D. C. middle district of Alabama.

The cause of this action is two promissory notes in substance as follows:

$733 31. PHILADELPHIA, *March* 3*d*, 1840.

Twelve months after date we promise to pay to the order of Sam'l Woodward, at the branch of the bank of the State of Alabama, in Mobile, seven hundred and thirty-three $\frac{31}{100}$ dollars, without defalcation, for value received.

(Signed) TAGGART, SWANZY & PULLIUM.

$434 94. PHILADELPHIA, *March* 3*d*, 1840.

Twelve months after date we promise to pay to the order of Samuel Woodward, at the branch of the bank of the State of Alabama, in Mobile, four hundred and thirty-four $\frac{94}{100}$ dollars, without defalcation, for value received.

(Signed) PULLIUM, SWANZY & TAGGART.

Which are still due and unpaid.

MARTIN & HUNTINGTON,
Plaintiffs' attorneys.

Received 11th November, 1841; executed on Pullam 19th November, 1841. Swanzy not found.

R. L. CRAWFORD,
U. S. Marshal,
By THOS. EMOND, *D. M.*

And afterwards, to wit, at the term of said court, begun and held on the first Monday after the fourth Monday of November, anno Domini 1841, the plaintiff, by his attorneys, filed a declaration in the words and figures following, to wit:

UNITED STATES OF AMERICA.

District court of the United States for the middle district of Alabama.

November term, 1841.

Samuel Woodward, who is a citizen of the State of Pennsylvania, plaintiff in this action, complains by attorney of Robert Swanzy and Zachary Pullium, (against the former of whom this suit is hereby discontinued,) the same not having been served with process, who are citizens of the State of Alabama, and surviving partners of Moses W. Taggart, deceased, with whom they traded under the firm, name, and style of Taggart, Swanzy & Pullium, in custody, &c., of a plea of trespass on the case in assumpsit. For that whereas, heretofore, to wit,

on the third day of March, in the year one thousand eight hundred and forty, at Philadelphia, to wit, in the district aforesaid, the said defendants, under the name of Taggart, Swanzy & Pullium, made and delivered to the plaintiff their certain promissory note of that date, and thereby then and there promised to pay the plaintiff the sum of seven hundred and thirty-three $\frac{33}{100}$ dollars, without defalcation, at the branch of the bank of the State of Alabama, at Mobile, for value received, twelve months after the date of the said promissory note, (which time has elapsed,) by means whereof the said defendants became liable to the plaintiff, according to the tenor and effect of said promissory note.

And for that whereas the said defendants, under the name of Pullium, Swanzy & Taggart, heretofore, to wit, on the third day of March, in the year one thousand eight hundred and forty, at Philadelphia, to wit, in the district aforesaid, made and delivered to the plaintiff their certain other promissory note of that date, and thereby then and there promised to pay the plaintiff the sum of four hundred and thirty-four dollars and ninety-four cents, without defalcation, at the branch of the bank *of the bank* of the State of Alabama, at Mobile, for value received, twelve months after the date of the said promissory note, (which time has elapsed,) by means whereof the said defendants became liable to the plaintiff according to the tenor and effect of the said promissory note. And the plaintiff in fact says, that the said two promissory notes were duly presented at the counter of the said branch bank for payment, yet that neither the plaintiff nor any other person in their behalf appeared to pay, or did pay, the same, though request of payment was duly made; and that the said plaintiffs have disregarded their promises, and have not as yet, nor has either of them, paid the said sums of money in said promissory notes severally specified, though often requested so to do, but to pay the same have hitherto wholly neglected and refused, and still neglect and refuse, to the damage of the plaintiff two thousand dollars, wherefore suit, &c.

MARTIN & HUNTINGTON, *Plffs. att'ys.*

And afterwards, to wit, at the term of said court, begun and held on the fourth Monday of May, A. D. 1842, proceedings were had herein as follows, to wit:

This day came the plaintiff, by his attorneys, and on their motion this cause was discontinued as to Robert Swanzy, upon whom process was not served; and Zachary Pullium, the other defendant, being solemnly called, came not, but wholly made default, whereby said plaintiff herein against him remained altogether undefended.

It is therefore, on motion, considered by the court, that the said plaintiff do recover against the said Zachary Pullium the sum of twelve hundred and eighty-two $\frac{44}{100}$ dollars, for damages as assessed by the clerk of this court, together with the costs in this behalf expended.

Upon which judgment, afterwards, to wit, on the tenth day of June, anno Domini one thousand eight hundred and forty-two, a writ of fieri facias was issued, which is in the words and figures following, to wit:

Clerk's fees - - - -	$13 34
Marshal's fees, &c. -	5 50
Attorneys' fees - - -	15 00
	$33 84

UNITED STATES OF AMERICA.

District court of the United States for the middle district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements of Zachary Pullium, of said district, you cause to be made the sum of twelve hundred and eighty-two dollars and forty-four cents, with interest thereon, from the 26th day of May, A. D. 1842, which Samuel Woodward at the term of said court, begun and held on the fourth Monday of May, 1842, has recovered against him for damages; also, the sum of thirty-three dollars and eighty-four cents, which to the said Samuel Woodward in the same court were adjudged for costs and charges in that behalf expended, whereof the said Zachary Pullium is convicted, as appears of record, and that you have the said sum of money before the said district court on the first Monday after the fourth Monday of November next, at the place of holding said court, at Tuskaloosa, to render to the said Samuel Woodward of the damages and costs aforesaid, and have you then and there this writ.

Witness the honorable William Crawford, judge of the court aforesaid, this fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-two.

Issued the 10th day of June, in the year of our Lord one thousand eight hundred and forty-two.

Attest: A. G. COOK,
Clerk D. C., middle district of Alabama.

Which writ of fieri facias was afterwards, to wit, on the 7th day of November, A. D. 1842, returned by the marshal with an endorsement thereon, in the words and figures following, to wit:

Received 10th June, 1842; levied 26th October, 1842, on one negro man named Joe, one man named Nat, one boy named Bill, one boy named Little George, one woman named Patsy; and advertised to be sold in Tuskaloosa on the first Monday in November next; on the day of sale a claim interposed by Stephen M. Smith; affidavit made, and bond and security given to try the right of property.

WM. ARMISTEAD, *U. S. marshal,*
By J. A. BEAL, *D. M.*

And on the day and year aforesaid, to wit, on the 7th day of November, A. D. 1842, an affidavit and bond were filed in the clerk's office of said court, which are in the words and figures following, to wit:

Affidavit.

UNITED STATES DISTRICT COURT,
Middle district of Alabama.

Stephen M. Smith, agent for Amos Albritton, of the county of Pickens, in said district, being duly sworn, saith, that certain negro slaves levied on by the marshal of said district, as the property of Zachary Pullium, by virtue of an execution issued from the office of the clerk of said middle district, for the sum of twelve hundred and eighty-two dollars and forty-four cents, at the suit of Samuel Woodward, to wit, one negro man named Joe, one negro man named Nat, one boy named Bill, one boy named Little George, and one woman named Patsy, are not the property of the said Pullium, but are in truth and in fact the property of the said Amos Albritton; and said Smith, agent as aforesaid, prays that a trial may be had to determine the right to said property, &c., &c.; and further saith not.

S. M. SMITH, *Agent.*

Sworn to and subscribed before me, this 7th day of November, A. D. 1842.

E. M. BURTON, *Justice of the peace*
For Tuskaloosa city and county.

Claim bond.

THE STATE OF ALABAMA, *Tuskaloosa county.*

Know all men by these presents, that we, Stephen M. Smith, agent, and Edmund T. Bush, and Gideon B. Frierson, all of the counties of Pickens and Sumter, and State of Alabama, are held and firmly bound unto Samuel Woodward, in the sum of two thousand six hundred and thirty-two dollars and fifty-six cents, for the payment of which well and truly to be made, we bind ourselves, our heirs, administrators, and executors, jointly and severally, firmly by these presents.

In testimony whereof we hereunto set hands and affixed our seals this seventh day of November, in the year of our Lord one thousand eight hundred and forty-two.

The condition of the above obligation is such, that whereas heretofore, to wit, on the tenth day of June, A. D. 1842, there was issued from the office of the district court (of the United States) for the middle district of Alabama, an execution or fieri facias, directed to the marshal of said district, commanding him, that of the goods and chattels, lands and tenements of Zachary Pullium, of said district, he should cause to be made the sum of twelve hundred and eighty-two dollars and forty-four cents, with interest thereon from the 26th day of May, 1842, which Samuel Woodward, the obligee aforesaid, at a term of said court begun and held on the fourth Monday of May, A. D. 1842, recovered against him, the said Zachary Pullium, for "debt and damages, as also the sum of thirty-three dollars and eighty-four cents, which to the said Samuel Woodward were in the same court adjudged

for costs and charges in that behalf expended, which execution was and is returnable to a term of the said district court of the United States for the middle district of Alabama, to be held on the first Monday after the fourth Monday in November next, after the date of the said execution and now instant; and whereas the said marshal, in virtue of the said execution, and to procure satisfaction thereof, hath levied on and taken as the property of the said Zachary Pullium the following negro slaves, to wit: One negro man named Joe, one negro man named Nat, one boy named Bill, one boy named Little George, one woman named Patsy; and whereas the said negro slaves have been claimed by one Amos Albritton, by his agent, Stephen M. Smith, aforesaid, who hath made affidavit thereof, according to law, for the purpose of having the right to the said negro slaves tried:

Now, if the said negro slaves shall, will, and truly be forthcoming, if the same shall be found liable to said execution, to satisfy the same, and for the payment of all such costs and damages as shall be recorded for the putting in of the said claim for delay, then the above obligation to be void; otherwise to remain in full force and virtue.

The words of the United States, on the former page, interlined before signing.

S. M. SMITH, *Agent*, [SEAL.]
GIDEON B. FRIERSON, [SEAL.]
EDMUND T. BUSH. [SEAL.]

Signed, sealed, and delivered before me, this 7th November, 1842. All the obliterations and erasures made before signed.

J. A. BEAL, *Deputy*."

And afterwards, to wit, on the day pleas were filed in the words and figures following, to wit:

SAMUEL WOODWARD, plaintiff in execution,
vs.
AMOS ALBRITTON, claimant.

U. S. district court for the middle district of Alabama, December term, 1842.

And the said Samuel Woodward, plaintiff in execution, comes and says, that the negros Joe, Nat, Bill, Little George, and Patsy, levied on *the* by the marshal to satisfy the judgment of the said plaintiff in this behalf, were, at the time of the levy, to wit, on the 26th October, 1842, liable for the satisfaction of the judgment and execution aforesaid.

And the said Samuel Woodward, plaintiff, &c., further says, that at the time of the levy aforesaid, to wit, on the 26th October, 1842, the said Zachary Pullium had a property in the negroes aforesaid, which was liable to the satisfaction of said execution.

HUNTINGTON & PORTER,
Pro plaintiff in execution."

"Issue in short by consent as to both the above allegations.

PECK & CLARK,
For claimant.

And afterwards, to wit, at the term of said court, begun and held on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, an order was had in the words following, to wit:

On motion of said plaintiff, by his attorneys, it is ordered that this cause be continued."

And afterwards, to wit, at the term of the court aforesaid, begun and held on the fourth Monday of May, in the year of our Lord one thousand eight hundred and forty-three, an order was had as follows, to wit:

It is ordered that this cause be continued.

And now at this day, to wit, on the seventh day of December, A. D. 1843, being a day of the term of said court first aforesaid, begun and held for said middle district at Tuskaloosa, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-three, proceedings were had herein as follows, to wit:

SAMUEL WOODWARD, plff. in execution,
vs.
AMOS ALBRITTON, claimant. } 577.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit: David M. Boyd and eleven others, who being elected, tried and sworn, well and truly to try the issue joined between said parties, upon their oaths do say, they find the issue in favor of the said plaintiff in execution, and that the property levied on is liable to the satisfaction of the execution of said plaintiff, and that they assess the value of the said property as follows, to wit: the negro man Joe, at the sum of five hundred dollars; the negro man Nat, at the sum of five hundred dollars; the negro boy Bill, at the sum of three hundred dollars; the negro boy Little George, at the sum of two hundred and fifty dollars; and the negro woman Patsy, at the sum of three hundred and seventy-five dollars.

It is therefore considered by the court that the said property is liable as aforesaid, and that the same be condemned to satisfy the said plaintiff's execution; and it further considered by the court that said plaintiff in execution recover against said claimant the costs in this behalf expended."

Memo.—At the trial of this cause the claimant, by his attorneys, tendered a bill of exceptions to the opinion of the court, which bill was received, signed and sealed by the court, and ordered to be made a part of the record in this cause, and is as follows, to wit:

1st.

"DISTRICT COURT.

"SAMUEL WOODWARD, plaintiff in execution,
vs.
AMOS ALBRITTON, claimant of property."

Fall term, 1843.

Be it remembered, that on the trial of the issue made in this case, the plaintiff in execution read to the jury a judgment recovered in the district court of the middle district of Alabama, for the sum of twelve hundred and eighty-two dollars and forty-four cents, rendered at the May term of said court, in the year 1842, against Zachary Pullium. He then introduced an execution issued on said judgment on the 10th day of June, 1842, on which execution was the following endorsements:

Received 10 June, 1842.

Levied 26th October, 1842, on one negro man named Joe, one man named Nat, one boy named Bill, and one boy named Little George, one woman named Patsy; and advertised to be sold in Tuscaloosa on the first Monday in November next, on the day of sale; a claim interposed by Stephen M. Smith; affidavit made, and bond and security given to try the right of property.

WM. ARMSTEAD, *U. S. marshal*,
By J. A. BEAL, *Deputy marshal.*

After the plaintiff in execution had rested his cause, the complainant introduced his evidence to sustain his claim. He introduced two judgments recovered against the said Zachary Pullium, in the district court of Pickens county, on the 19th day of April, 1842: one of the sum of $876,83 and costs, and the other for the sum of $1,063 91 and costs. On these two judgments executions were issued on the 4th day of May, in the year 1842, and on the same day were received by the sheriff of Picken's county, which were on the 12th July, 1842, levied on two negro men named Joseph and Nat, and bonds were given for the forthcoming of said negroes on the first Monday in August, 1842, with said claimant as security, which bonds were forfeited and so returned by the sheriff.

On the 3d of August, 1843, executions were issued on said bonds against Pullium and his surety in the forthcoming bonds, which went into the hands of the sheriff of Picken's county on the same day, and on the 21st September, 1842, were levied on the negroes named in the issue in this case and eleven other slaves, as the property of the said Pullium, which said slaves were sold by the sheriff by virtue of said executions last named, at public auction on the third day of October, 1842, to the said claimant, for fourteen hundred dollars, and thereupon the sheriff gave the said claimant a bill of sale for the said slaves. It also appeared that the said claimant had satisfied the balance of the said executions. It also appeared that the said property was sold for specie.

On the case being submitted to the jury, the court charged the jury that if the executions which issued on the two judgments against Pullium were levied upon sufficient property, and a bond given for the forthcoming of the property on the day of sale, in each case, which bonds were forfeited and thus returned by the sheriff, and that afterwards executions were issued on the judgments rendered on the said forthcoming bonds, against the said Pullium and his surety in the said forthcoming bonds, which said executions did not come to the hands of the sheriff until some days after the execution in favor of the plaintiff was received by the marshal, that the said plaintiff had the priority of lien on the property of Pullium, and that the said negroes levied upon by the marshal in said case were liable to satisfy the execution of the said plaintiff, notwithstanding they had been levied upon and sold by the sheriff under the execution against Pullium and his surety in the forthcoming bonds; to which charge claimant excepts, and prays the judge of this court to sign and seal this bill of exceptions, which is accordingly done. WM. CRAWFORD, [SEAL.]

And afterwards, to wit, on the fifteenth day of December, anno Domini 1843, was filed in the clerk's office of said court a writ of error and bond for the prosecution thereof, which writ and bond are as follows, to wit:

Writ of error.

UNITED STATES OF AMERICA.

The President of the United States of America, to the judge of the district court of the United States of America for the middle district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said district court before you, between Samuel Woodward, (plaintiff in execution,) plaintiff, and Amos Albritton, (claimant,) defendant, a manifest error hath happened to the great damage of the said Amos Albritton, as by the complaint of said Amos Albritton appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the fifth judicial circuit, southern district of Alabama, together with this writ, so that you have the same at the place of holding said circuit court, in the city of Mobile, in the State of Alabama, on the second Monday of March next, in the said circuit court to be then and there held, that then the record and proceedings aforesaid being inspected, the said circuit court may cause to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable John McKinley, presiding judge of said circuit court, this fifteenth day of December, in the year of our Lord [L. S.] one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth year.

Attest: A. G. COOK,
Clerk D. C. middle district of Alabama.

Bond.

Circuit court of the United States for the fifth judicial circuit, southern district of Alabama.

AMOS ALBRITTON, claimant,
vs.
SAMUEL WOODWARD, plaintiff in ex'n. } In error.

Know all men by these presents, that we, Amos Albritton, Robert Jemison, jr. and Dennis Dent, are held and firmly bound unto Samuel Woodward in the sum of twenty-five hundred and sixty-four dollars and eighty-eight cents, to be paid to the Samuel Woodward, his heirs, executors, or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this fifteenth day of December, A. D. 1843.

Whereas the above named Amos Albritton hath prosecuted a writ of error to the circuit court of the United States for the fifth judicial circuit, southern district of Alabama, to reverse the judgment rendered in favor of the above named Samuel Woodward against the above named Amos Albritton in the above mentioned suit, by the district court of the United States for the middle district of Alabama:

Now, therefore, the condition of this obligation is such, that if the above named Amos Albritton shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

AMOS ALBRITTON, [SEAL.]
R. JEMISON, JR., [SEAL.]
DENNIS DENT, [SEAL.]

Signed, sealed and delivered in the presence of—
A. G. COOK.

I approve the within bond, this fifteenth day of December, 1843.
WM. CRAWFORD,
Judge.

I, Albert G. Cook, clerk of the district court of the United States for the middle district of Alabama, hereby certify, that the foregoing is a true and complete transcript of the record and proceedings in a certain suit for the trial of the right of property, lately detained in said district

court, between Samuel Woodward, plaintiff in execution, and Amos Albritton, claimant, with all things concerning the same, as appears from the records of the district court aforesaid now remaining in said clerk's office.

In testimony of all which I hereto put my hand and affix the seal of said district court, at office in the city of Tuskaloosa, and middle district of Alabama, this tenth day of February, in the year of our Lord one thousand eight hundred and forty-four, and sixty-eighth year of our foundation.

A. G. COOK,
Cl'k D. C. mid. dist. Ala.

Circuit court of the United States, held in the city of Mobile, in the fifth judicial circuit.

AMOS ALBRITTON
vs.
SAMUEL WOODWARD.

March term, in the year 1844.

The plaintiff in this cause, by Peck & Clark, his attorneys, comes and says, that in the record, proceedings, and judgment of the court below there is manifest error in this, to wit:

The court below erred in the charge given to the jury, as stated in the bill of exceptions.

For which error and others, &c., the said plaintiff in error prays that the judgment may be reversed, &c.

PECK & CLARK,
Attorneys, and of counsel for plaintiff in error.

Filed, March 4th, 1844.

D. FILES, *Clerk.*

And afterwards, to wit, at a term of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, begun and held in and for said district at Mobile, on the 4th Monday of December, in the year of our Lord one thousand eight hundred and forty-four, the following order was entered in this cause, to wit:

Continuance.

S. WOODWARD, plaintiff in error,
vs.
A. ALBRITTON, claimant.

It is ordered by the court that this cause be continued.

And afterwards, to wit, on the 25th day of April, the same being a day of the April term, 1845, of said court, the following order was made, viz:

Continuance.

S. WOODWARD, plaintiff in error,
vs.
A. ALBRITTON, claimant.

It is ordered by the court that this cause be continued.

And on the 16th day of April, 1846, the same being a day of the April term, A. D. 1846, of said court, the following order was made, viz:

Continuance.

S. WOODWARD, plaintiff in error,
vs.
A. ALBRITTON, claimant.

It is ordered by the court that this cause be continued.

And on the 21st day of January, 1847, the same being a day of the December term, A. D. 1846, of said court, the following order was made in this cause:

Death of defendant suggested.

S. WOODWARD, plaintiff in error,
vs.
A. ALBRITTON, claimant.

The death of A. Albritton, claimant, the defendant in this cause, being this day suggested to the court, this suit is abated.

And on the 27th day of December, the same being a day of the December term, A. D. 1847, of said court, the following order was made in this cause:

Order of revival, &c., and continuance.

ZACKARY PULLIAM, executor of the last will of Amos Albritton, deceased,
vs.
SAMUEL WOODWARD.

The death of Amos Albritton having been suggested at a previous term of this court, upon the motion of Zachariah Pulliam, who produces to the court letters testamentary granted by the county court of Pickens county, on the last will of said Albritton: It is considered by the court that said Zachariah Pulliam, as such executor, be made a party to this suit; that it stand renewed in the name of Zachariah Pulliam, executor of the last will and testament of Amos Albritton, plaintiff in error, against said Woodward, as defendant, and the cause is continued.

And on the first day of March, 1848, the same being a day of the special term of said court held on the 4th Monday of February, 1848, the following order was made in this cause, to wit:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 14th day of April, the same being a day of the April term, 1848, of said court, the following order was made in this cause:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 5th January, 1849, that being a day of the December term, A. D. 1848, of said court, the following order was made in this cause:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 10th April, the same being a day of the April term, 1849, of said court, the following order was made in this cause:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 12th day of April, 1850, the same being a day of the April term, 1850, of said court, the following order was made in this cause, to wit:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton,
vs.
SAMUEL WOODWARD.

On motion of the plaintiff, it is ordered by the court that this cause be continued.

And on the 6th January, 1851, that being a day of the December term, 1850, of said court, the following order was made in this cause, viz:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton, deceased,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 16th April, the same being a day of the April term, 1851, of said court, the following order was made in this cause:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton, deceased,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 30th December, that being a day of the December term, 1851, of said court, the following order was made in this cause:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton, deceased,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 16th April, a day of the April term, A. D. 1852, of said court, the following order was made in this cause, viz:

Order to transfer.

ZACKARY PULLIAM, executor of Amos Albritton, deceased,
vs.
SAMUEL WOODWARD.

On motion, it is ordered that this cause be transferred to the appeal docket of this court.

And afterwards, to wit, on the 23d April, 1852, being a day of the term of said court last aforesaid, the following order was made in this cause:

Continuance.

ZACKARY PULLIAM, executor of Amos Albritton, deceased,
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 12th January, 1853, that being a day of the December term, 1852, of said court, the following order was made in this cause:

Continuance.

ZACKARY PULLIAM, executor, &c.
vs.
SAMUEL WOODWARD.

It is ordered by the court that this cause be continued.

And on the 18th April, that being a day of the April term, 1853, of said court, the following order was made in this cause, to wit:

Order transferring this cause to the Supreme Court U. S.

ZACKARY PULLIAM, executor of Amos Albritton, deceased,
vs.
SAMUEL WOODWARD.

This day came the respective parties, by their attorneys, and it is ordered by the court, that the said cause be transferred to the Supreme Court of the United States, according to the statute in such case made and provided, and that the same be stricken from the docket of this court.

Testamentary letters to Z. Pulliam on estate of Albritton.

THE STATE OF ALABAMA, *Pickens county.*

Orphans' court, January term, 1847.

Be it remembered and made known to all whom it may concern, that upon the production of the will of Amos Albritton, deceased, and upon the application of Zachary Pulliam, the aforesaid will was examined, proved, and ordered to be recorded; and upon the application of the said Zachary Pulliam, one of the executors in the aforesaid will named, to our said orphans' court, at a session held in and for the said county of Pickens, on the second Monday in January, A. D. 1847, being the 11th day of said month, I have caused these my letters testamentary to the last will and testament of Amos Albritton, of said county, deceased, to issue and be granted to and in favor of the aforesaid Zackary Pulliam, in and upon the goods and chattels, rights and credits of Amos Albritton, of the county aforesaid, deceased, and to administer the will of the said Amos Albritton according to his meaning and intent, and in every case, as occasion may require, is hereby authorized and invested with sufficient authority to bring suit and be sued as the lawful executor of the said Amos Albritton.

Witness the honorable Lemuel A. Gilkey, judge of our said orphans' court, this 11th day of January, 1847, and the 71st year of American independence.

Attest: FRANCIS W. BOSTWICK,
Clerk O. C.

Certificate.

STATE OF ALABAMA, *Pickens county.*

I, Francis W. Bostwick, clerk of the county court of Pickens county, do hereby certify, that the foregoing is a true copy of the letters testamentary granted to Zackary Pulliam upon the estate of Amos Albritton, deceased, which issued from this office on the 11th day of January, 1847.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of this court, this the 17th day of October, 1847.

FRANCIS W. BOSTWICK, *Clerk, &c.*

I, John Fitts, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, do certify that the foregoing contains a true and complete transcript of the record and proceedings in a certain suit lately determined in the district court of the United States, for the middle district of *of* Alabama, at Tuscaloosa, between Samuel Woodward, plaintiff in execution, and Amos Albritton, claimant, brought into said circuit court by writ of error to said middle district, (with all things concerning the same,) as the same now remain on file and of record in my office.

[SEAL.] In testimony whereof I hereto set my hand and affix the seal of the said circuit court at office, in the city of Mobile, this 23d day of November, A. D. 1853.

JOHN FITTS,
Clk. C. C., So. dis. Ala.